

or other material changes in the nature of the original application. The resubmission should address the specific deficiencies cited in the DWOP. The Director may draw appropriate inferences from the failure of an applicant to attempt to provide the information requested in the DWOP.

(8) In the event an applicant fails to address the noted deficiencies in the response to the DWOP, the Director may deny the application.

(f) *Decisions on applications.* The Director shall prepare a written decision granting or denying each application. However, when he deems appropriate, the Director may issue a consolidated decision on two or more applications. The Director shall promptly forward a copy of the decision to each applicant institution and to the FEDERAL REGISTER for publication.

(g) *Withdrawal of applications.* The Director shall discontinue processing an application withdrawn by the applicant and shall publish notice of such withdrawal in the FEDERAL REGISTER. If at any time while its application is pending before the Director, either during the initial application or resubmission stage, an applicant cancels an order for the instrument to which the application relates or ceases to have a firm intention to order such instrument or apparatus, the institution shall promptly notify the Director. Such notification shall constitute a withdrawal. Withdrawals shall be considered as having been finally denied for purposes of § 301.7(c) below.

(h) Nothing in this subsection shall be construed as limiting the Director's discretion at any stage of processing to insert into the record and consider in making his decision any information in the public domain which he deems relevant.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982, as amended at 50 FR 11501, Mar. 22, 1985; 66 FR 28833, May 25, 2001; 74 FR 30463, June 26, 2009]

§ 301.6 Appeals.

(a) An appeal from a final decision made by the Director under § 301.5(f) may be taken in accordance with U.S. Note 6(e), Subchapter X, Chapter 98, HTSUS, only to the U.S. Court of Appeals for the Federal Circuit and only

on questions of law, within 20 days after publication of the decision in the FEDERAL REGISTER. If at any time while its application is under consideration by the Court of Appeals on an appeal from a finding by the Director an institution cancels an order for the instrument to which the application relates or ceases to have a firm intention to order such instrument, the institution shall promptly notify the court.

(b) An appeal may be taken by: (1) The institution which makes the application;

(2) A person who, in the proceeding which led to the decision, timely represented to the Secretary of Commerce in writing that he/she manufactures in the United States an instrument of equivalent scientific value for the purposes for which the instrument to which the application relates is intended to be used;

(3) The importer of the instrument, if the instrument to which the application relates has been entered at the time the appeal is taken; or

(4) An agent of any of the foregoing.

(c) Questions regarding appeal procedures should be addressed directly to the U.S. Court of Appeals for the Federal Circuit, Clerk's Office, Washington, DC 20439.

[47 FR 32517, July 28, 1982, as amended at 66 FR 28834, May 25, 2001]

§ 301.7 Final disposition of an application.

(a) Disposition of an application shall be final when 20 days have elapsed after publication of the Director's final decision in the FEDERAL REGISTER and no appeal has been taken pursuant to § 301.6 of these regulations, or if such appeal has been taken, when final judgment is made and entered by the Court.

(b) The Director shall notify the CBP Port when disposition of an application becomes final. If the Director has not been advised of the port of entry of the instrument, or if entry has not been made when the decision on the application becomes final, the Director shall notify the Commissioner of final disposition of the application.

(c) An instrument, the duty-free entry of which has been finally denied,

§ 301.8

15 CFR Ch. III (1–1–14 Edition)

may not be the subject of a new application from the same institution.

[47 FR 32517, July 28, 1982, as amended at 66 FR 28834, May 25, 2001; 74 FR 30463, June 26, 2009]

§ 301.8 Instructions for entering instruments through Customs and Border Protection under subheading 9810.00.60, HTSUS.

Failure to follow the procedures in this section may disqualify an instrument for duty-free entry notwithstanding an approval of an application on its merits by the Department of Commerce.

(a) *Entry procedures.* (1) An applicant desiring duty-free entry of an instrument may make a claim at the time of entry of the instrument into the Customs territory of the United States (as defined in 19 CFR 101.1) that the instrument is entitled to duty-free classification under subheading 9810.00.60, HTSUS.

(2) If no such claim is made the instrument shall be immediately classified without regard to subheading 9810.00.60, HTSUS, duty will be assessed, and the entry liquidated in the ordinary course.

(3) If a claim is made for duty-free entry under subheading 9810.00.60, HTSUS, the entry shall be accepted without requiring a deposit of estimated duties provided that a copy of the form, stamped by Customs and Border Protection as accepted for transmittal to the Department of Commerce in accordance with § 301.4(b), is filed simultaneously with the entry.

(4) If a claim for duty-free entry under subheading 9810.00.60, HTSUS is made but is not accompanied by a copy of the properly stamped form, a deposit of the estimated duty is required. Before the entry is liquidated, the applicant must file with the CBP Port a properly stamped copy of the application form. In the event that the CBP Port does not receive a copy of the properly stamped application form before liquidation, the instrument shall be classified and liquidated in the ordinary course, without regard for subheading 9810.00.60, HTSUS.

(5) Entry of an instrument after the Director's approval of an application. Whenever an institution defers entry

until after it receives a favorable final determination on the application for duty-free entry of the instrument, either by delaying importation or by placing the instrument in a bonded warehouse or foreign trade zone, the importer shall file with the entry of the instrument (i) the stamped copy of the form, (ii) the institution's copy of the favorable final determination and (iii) proof that a bona fide order for the merchandise was placed on or before the 60th day after the favorable decision became final pursuant to § 301.7 of these regulations. Liquidation in such case shall be made under subheading 9810.00.60, HTSUS.

(b) *Normal Customs and Border Protection entry requirements.* In addition to the entry requirements in paragraph (a) of this section, the normal Customs and Border Protection entry requirements must be met. In most of the cases, the value of the merchandise will be such that the formal Customs and Border Protection entry requirements, which generally include the filing of a Customs entry bond, must be complied with. (For further information, see 19 CFR 142.3 and 142.4 (TD-221).)

(c) *Late filing.* Notwithstanding the preceding provisions of this section any document, form, or statement required by regulations in this section to be filed in connection with the entry may be filed at any time before liquidation of the entry becomes final, provided that failure to file at the time of entry or within the period for which a bond was filed for its production was not due to willful negligence or fraudulent intent. Liquidation of any entry becomes conclusive upon all persons if the liquidation is not protested in writing in accordance with 19 CFR part 174, or the necessary document substantiating duty-free entry is not produced in accordance with 19 CFR 10.112. Upon notice of such final and conclusive liquidation, the Department of Commerce will cease the processing of any pending application for duty-free entry of the subject article. In all other respects, the provisions of this section do not apply to Department of Commerce responsibilities and procedures for processing applications pursuant to other sections of these regulations.